
HOUSE BILL No. 1226

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-11-2; IC 13-18; IC 13-20-1-1; IC 13-22; IC 13-26-2-6.

Synopsis: Environmental law technical corrections. Makes numerous technical corrections to Title 13 of the Indiana Code concerning environmental law.

Effective: Upon passage; January 1, 2002.

Sturtz

January 9, 2001, read first time and referred to Committee on Environmental Affairs.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1226

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-11-2-1.5, AS ADDED BY P.L.143-2000,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2002]: Sec. 1.5. "Acute hazardous waste", for purposes
4 of IC 13-22-4-3.1, has the meaning set forth in ~~IC 13-22-4-3.1(a)~~. **40**
5 **CFR Part 261.**

6 SECTION 2. IC 13-11-2-50.5, AS ADDED BY P.L.140-2000,
7 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 UPON PASSAGE]: Sec. 50.5. "Degradation", for purposes of
9 IC 13-18-3, ~~has the meaning set forth in IC 13-18-3-2(b)~~. **means, with**
10 **respect to a National Pollutant Discharge Elimination System**
11 **permit, the following:**

12 (1) **With respect to an outstanding national resource water,**
13 **any new or increased discharge of a pollutant or a pollutant**
14 **parameter, except for a short term, temporary increase.**

15 (2) **With respect to an outstanding state resource water or an**
16 **exceptional use water, any new or increased discharge of a**
17 **pollutant or pollutant parameter that results in a significant**



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lowering of water quality for that pollutant or pollutant parameter, unless:

(A) the activity causing the increased discharge:

(i) results in an overall improvement in water quality in the outstanding state resource water or exceptional use water; and

(ii) meets the applicable requirements of 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2) and 327 IAC 2-1.5-4(a) and 327 IAC 2-1.5-4(b); or

(B) the person proposing the increased discharge undertakes or funds a water quality improvement project in accordance with IC 13-18-3-2(l) in the watershed of the outstanding state resource water or exceptional use water that:

(i) results in an overall improvement in water quality in the outstanding state resource water or exceptional use water; and

(ii) meets the applicable requirements of 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2) and 327 IAC 2-1.5-4(a) and 327 IAC 2-1.5-4(b).

SECTION 3. IC 13-11-2-72.5, AS ADDED BY P.L.140-2000, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 72.5. "Exceptional use water", for purposes of **section 50.5 of this chapter and IC 13-18-3**, ~~has the meaning set forth in IC 13-18-3-2(c).~~ **means any water designated as an exceptional use water by the water pollution control board, regardless of when the designation occurred.**

SECTION 4. IC 13-11-2-149.5, AS ADDED BY P.L.140-2000, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 149.5. "Outstanding national resource water", for purposes of **section 50.5 of this chapter and IC 13-18-3**, ~~has the meaning set forth in IC 13-18-3-2(d).~~ **means a water designated as such by the general assembly after recommendations by the water pollution control board and the environmental quality service council under IC 13-18-3-2(o) and IC 13-18-3-2(p). The designation must describe the quality of the outstanding national resource water to serve as the benchmark of the water quality that shall be maintained and protected. Waters that may be considered for designation as outstanding national resource waters include water bodies that are recognized as:**

(1) important because of protection through official action, such as:



- 1 (A) federal or state law;
- 2 (B) presidential or secretarial action;
- 3 (C) international treaty; or
- 4 (D) interstate compact;
- 5 (2) having exceptional recreational significance;
- 6 (3) having exceptional ecological significance;
- 7 (4) having other special environmental, recreational, or
- 8 ecological attributes; or
- 9 (5) waters with respect to which designation as an outstanding
- 10 national resource water is reasonably necessary for protection
- 11 of other water bodies designated as outstanding national
- 12 resource waters.

13 SECTION 5. IC 13-11-2-149.6, AS ADDED BY P.L.140-2000,
 14 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 UPON PASSAGE]: Sec. 149.6. "Outstanding state resource water", for
 16 purposes of **section 50.5 of this chapter and IC 13-18-3, has the**
 17 **meaning set forth in IC 13-18-3-2(c): means any water designated as**
 18 **such by the water pollution control board regardless of when the**
 19 **designation occurred or occurs. Waters that may be considered for**
 20 **designation as outstanding state resource waters include water**
 21 **bodies that have unique or special ecological, recreational, or**
 22 **aesthetic significance.**

23 SECTION 6. IC 13-11-2-237.5, AS ADDED BY P.L.132-2000,
 24 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 UPON PASSAGE]: Sec. 237.5. "Transient noncommunity water
 26 system", for purposes of IC 13-18-11, ~~has the meaning set forth in~~
 27 ~~IC 13-18-11-1(a):~~ **means a noncommunity water system that does**
 28 **not regularly serve at least twenty-five (25) of the same persons**
 29 **over six (6) months per year.**

30 SECTION 7. IC 13-18-3-2, AS AMENDED BY P.L.140-2000,
 31 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 UPON PASSAGE]: Sec. 2. (a) The board may adopt rules under
 33 IC 4-22-2 that are necessary to the implementation of:

- 34 (1) the Federal Water Pollution Control Act (33 U.S.C. 1251 et
- 35 seq.), as in effect January 1, 1988; and
- 36 (2) the federal Safe Drinking Water Act (42 U.S.C. 300f through
- 37 300j), as in effect January 1, 1988;

38 except as provided in IC 14-37.

39 (b) "Degradation" ~~means, with respect to a National Pollutant~~
 40 ~~Discharge Elimination System permit, the following:~~

- 41 (1) ~~With respect to an outstanding national resource water, any~~
 42 ~~new or increased discharge of a pollutant or a pollutant parameter;~~

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except for a short term, temporary increase.

(2) With respect to an outstanding state resource water or an exceptional use water, any new or increased discharge of a pollutant or pollutant parameter that results in a significant lowering of water quality for that pollutant or pollutant parameter, unless:

(A) the activity causing the increased discharge:

(i) results in an overall improvement in water quality in the outstanding state resource water or exceptional use water; and

(ii) meets the applicable requirements of 327 IAC 2-1-2(1) and (2) and 327 IAC 2-1.5-4(a) and (b); or

(B) the person proposing the increased discharge undertakes or funds a water quality improvement project in accordance with subsection (1) in the watershed of the outstanding state resource water or exceptional use water that:

(i) results in an overall improvement in water quality in the outstanding state resource water or exceptional use water; and

(ii) meets the applicable requirements of 327 IAC 2-1-2(1) and (2) and 327 IAC 2-1.5-4(a) and (b); **has the meaning set forth in IC 13-11-2-50.5.**

(c) "Exceptional use water" means any water designated as an exceptional use water by the board, regardless of when the designation occurred: **has the meaning set forth in IC 13-11-2-72.5.**

(d) "Outstanding national resource water" means a water designated as such by the general assembly after recommendations by the board and the environmental quality service council under subsections (o) and (p): The designation must describe the quality of the outstanding national resource water to serve as the benchmark of the water quality that shall be maintained and protected: Waters that may be considered for designation as outstanding national resource waters include water bodies that are recognized as:

(1) important because of protection through official action, such as:

(A) federal or state law;

(B) presidential or secretarial action;

(C) international treaty; or

(D) interstate compact;

(2) having exceptional recreational significance;

(3) having exceptional ecological significance;

(4) having other special environmental, recreational, or ecological

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attributes; or

(5) waters with respect to which designation as an outstanding national resource water is reasonably necessary for protection of other water bodies designated as outstanding national resource waters: **has the meaning set forth in 13-11-2-149.5.**

(e) "Outstanding state resource water" means any water designated as such by the board regardless of when the designation occurred or occurs. Waters that may be considered for designation as outstanding state resource waters include water bodies that have unique or special ecological, recreational, or aesthetic significance: **has the meaning set forth in IC 13-11-2-149.6.**

(f) "Watershed" has the meaning set forth in IC 14-8-2-310.

(g) The board may designate a water body as an outstanding state resource water by rule if the board determines that the water body has a unique or special ecological, recreational, or aesthetic significance.

(h) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must consider the following:

(1) Economic impact analyses, presented by any interested party, taking into account future population and economic development growth.

(2) The biological criteria scores for the water body, using factors that consider fish communities, macro invertebrate communities, and chemical quality criteria using representative biological data from the water body under consideration.

(3) The level of current urban and agricultural development in the watershed.

(4) Whether the designation of the water body as an outstanding state resource water will have a significant adverse effect on future population, development, and economic growth in the watershed, if the water body is in a watershed that has more than three percent (3%) of its land in urban land uses or serves a municipality with a population greater than five thousand (5,000).

(5) Whether the designation of the water body as an outstanding state resource water is necessary to protect the unique or special ecological, recreational, or aesthetic significance of the water body.

(i) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must make available to the public a written summary of the information considered by the board under subsections (g) and (h), including the board's conclusions concerning that information.



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(j) The commissioner shall present a summary of the comments received from the comment period and information that supports a water body designation as an outstanding state resource water to the environmental quality service council not later than one hundred twenty (120) days after the rule regarding the designation is finally adopted by the board.

(k) Notwithstanding any other provision of this section, the designation of an outstanding state resource water in effect on January 1, 2000, remains in effect.

(l) For a water body designated as an outstanding state resource water, the board shall provide by rule procedures that will:

- (1) prevent degradation; and
- (2) allow for increases and additions in pollutant loadings from an existing or new discharge if:

(A) there will be an overall improvement in water quality for the outstanding state resource water as described in this section; and

(B) the applicable requirements of 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2) and 327 IAC 2-1.5-4(a) and 327 2-1.5-4(b) are met.

(m) The procedures provided by rule under subsection (l) must include the following:

- (1) A definition of significant lowering of water quality that includes a de minimis quantity of additional pollutant load:

(A) for which a new or increased permit limit is required; and

(B) below which antidegradation implementation procedures do not apply.

- (2) Provisions allowing the permittee to choose application of one (1) of the following for each activity undertaken by the permittee that will result in a significant lowering of water quality in the outstanding state resource water or exceptional use water:

(A) Implementation of a water quality project in the watershed of the outstanding state resource water or the exceptional use water that will result in an overall improvement of the water quality of the outstanding state resource water or the exceptional use water.

(B) Payment of a fee, not to exceed five hundred thousand dollars (\$500,000) based on the type and quantity of increased pollutant loadings, to the department for deposit in the outstanding state resource water improvement fund established under section 14 of this chapter.

- (3) Criteria for the submission and timely approval of projects



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described in subdivision (2)(A).

(4) A process for public input in the approval process.

(5) Use of water quality data that is less than seven (7) years old and specific to the outstanding state resource water.

(6) Criteria for using the watershed improvement fees to fund projects in the watershed that result in improvement in water quality in the outstanding state resource water or exceptional use water.

(n) For a water body designated as an outstanding state resource water after June 30, 2000, the board shall provide by rule antidegradation implementation procedures before the water body is designated in accordance with this section.

(o) A water body may be designated as an outstanding national resource water only by the general assembly after recommendations for designation are made by the board and the environmental quality service council.

(p) Before recommending the designation of an outstanding national resource water, the department shall provide for an adequate public notice and comment period regarding the designation. The commissioner shall present a summary of the comments and information received during the comment period and the department's recommendation concerning designation to the environmental quality service council not later than ninety (90) days after the end of the comment period. The council shall consider the comments, information, and recommendation received from the department, and shall convey its recommendation concerning designation to the general assembly within six (6) months after receipt.

SECTION 8. IC 13-18-3-2.4, AS ADDED BY P.L.140-2000, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.4. (a) A permit holder shall review the feasibility of implementing additional or new control alternatives to attain water quality standards, including standards suspended under section 2.5 of this chapter. The permit holder shall conduct such a review periodically, but not less than every five (5) years after approval of the long term control plan by the department. The permit holder shall:

- (1) document to the department that the long term control plan has been reviewed;
- (2) update the long term control plan as necessary;
- (3) submit any amendments to the long term control plan to the department for approval; and
- (4) implement control alternatives determined to be cost effective.

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1 Cost effectiveness may be determined, at the option of the permit
2 holder, by using a knee of the curve analysis.

3 SECTION 9. IC 13-18-11-1, AS AMENDED BY P.L.132-2000,
4 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 UPON PASSAGE]: Sec. 1. (a) As used in this chapter, "transient
6 noncommunity water system" ~~means a noncommunity water system~~
7 ~~that does not regularly serve at least twenty-five (25) of the same~~
8 ~~persons over six (6) months per year.~~ **has the meaning set forth in**
9 **IC 13-11-2-237.5.**

10 (b) The commissioner may determine that this chapter does not
11 apply to a transient noncommunity water system.

12 SECTION 10. IC 13-20-1-1, AS AMENDED BY P.L.138-2000,
13 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 UPON PASSAGE]: Sec. 1. This chapter does not apply to an
15 individual, a corporation, a partnership, or a business association that
16 in its regular business activity:

17 (1) produces solid or industrial waste as a byproduct of or
18 incidental to its regular business activity; and

19 (2) disposes of the solid or industrial waste at a site that ~~meets the~~
20 ~~following conditions that is:~~

21 (A) owned by the individual, corporation, partnership, or
22 business association; and

23 (B) limited to use by that individual, corporation, partnership,
24 or business association for the disposal of solid or industrial
25 waste produced by:

26 (i) that individual, corporation, partnership, or business
27 association; or

28 (ii) a subsidiary of an entity referred to in item (i).

29 SECTION 11. IC 13-22-4-3.1, AS ADDED BY P.L.143-2000,
30 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 JANUARY 1, 2002]: Sec. 3.1. (a) **As used in this section,** "acute
32 hazardous waste" has the meaning set forth in ~~40 CFR Part 261.~~
33 **IC 13-11-2-1.5.**

34 (b) A person that:

35 (1) in any one (1) or more calendar months of a calendar year
36 generates:

37 (A) more than one hundred (100) kilograms but less than one
38 thousand (1,000) kilograms of hazardous waste;

39 (B) less than one (1) kilogram of acute hazardous waste; or

40 (C) less than one hundred (100) kilograms of material from the
41 cleanup spillage of acute hazardous waste; or

42 (2) accumulates at least one thousand (1,000) kilograms of

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hazardous waste or less than one (1) kilogram of acute hazardous waste;
 shall, before March 1 of each year, submit to the department on forms provided by the department a report, containing no more than a compilation of information from the Uniform Hazardous Waste Manifest form described in section 1(a) of this chapter, that summarizes the person's hazardous waste shipments during the previous calendar year.

(c) A person that:

(1) in any one (1) or more calendar months of a calendar year generates:

(A) more than one thousand (1,000) kilograms of hazardous waste;

(B) at least one (1) kilogram of acute hazardous waste; or

(C) at least one hundred (100) kilograms of material from the cleanup spillage of acute hazardous waste;

(2) accumulates at least six thousand (6,000) kilograms of hazardous waste or at least one (1) kilogram of acute hazardous waste; or

(3) is a treatment, storage, or disposal facility;

shall, before March 1 of each year, submit to the department either the biennial report required by the United States Environmental Protection Agency concerning the person's waste activities during the previous calendar year, or an annual report on forms provided by the department, containing no more than a compilation of information from the Uniform Hazardous Waste Manifest form described in section 1(a) of this chapter, that summarizes the person's hazardous waste shipments during the previous calendar year.

SECTION 12. IC 13-22-10-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. (a) A:

(1) certificate of environmental compatibility granted under:

(A) IC 13-7-8.6 (before its repeal); or

(B) this chapter **(before the expiration of the sections of this chapter authorizing the hazardous waste facility site approval authority to grant certificates of environmental compatibility);**

preempts any local government zoning or other land use regulations, laws, or ordinances; and

(2) person obtaining the certificate of environmental compatibility is not required to apply for approval by:

(A) a regional;

(B) a county; or

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- 1 (C) a municipal;
 2 zoning board or authority.
 3 (b) Local government may not prohibit or unduly restrict:
 4 (1) the transportation of hazardous waste or low level radioactive
 5 waste through the local government's area of jurisdiction that is
 6 en route to a facility; or
 7 (2) the:
 8 (A) treatment;
 9 (B) storage; or
 10 (C) disposal;
 11 of hazardous waste or low level radioactive waste at a facility
 12 within the jurisdiction of the local government.

13 SECTION 13. IC 13-26-2-6, AS AMENDED BY P.L.106-2000,
 14 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 UPON PASSAGE]: Sec. 6. (a) Except as provided in section 9 of this
 16 chapter, the hearing officer shall fix a time and place inside or within
 17 ten (10) miles of the proposed district for the hearing on any matter for
 18 which a hearing is authorized under this chapter.

19 (b) The hearing officer shall make a reasonable effort to provide
 20 notice of the hearing as follows:

- 21 (1) By publication of notice two (2) times each week for two (2)
 22 consecutive weeks in at least two (2) newspapers of general
 23 circulation in each of the counties, in whole or in part, in the
 24 district. The publication of notice must, at a minimum, include a
 25 legal notice and a prominently displayed three (3) inches by five
 26 (5) inches advertisement.
 27 (2) By certified mail, return receipt requested, mailed at least two
 28 (2) weeks before the hearing to the following:
 29 (A) The fiscal and executive bodies of each county with
 30 territory in the proposed district.
 31 (B) The executive of all other eligible entities with territory in
 32 the proposed district.
 33 (C) The state and any of its agencies owning, controlling, or
 34 leasing land within the proposed district, excluding highways
 35 and public thoroughfares owned or controlled by the Indiana
 36 department of transportation.
 37 (D) Each sewage disposal company holding a certificate of
 38 territorial authority under IC 8-1-2-89 respecting territory in
 39 the proposed district.
 40 (3) By making a reasonable effort to provide notice of the hearing
 41 by regular United States mail, postage prepaid, mailed at least two
 42 (2) weeks before the hearing to each freeholder within the

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1 proposed district.
 2 (4) By including the date on which the hearing is to be held **and**
 3 a brief description of:
 4 (A) the subject of the petition, including a description of the
 5 general boundaries of the area to be included in the proposed
 6 district; and
 7 (B) the locations where copies of the petition are available for
 8 viewing.
 9 **SECTION 14. An emergency is declared for this act.**

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